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Date of Decision: 11th October 1995

SPECIAL CIVIL APPLICATION NO. 8727 of 1989

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri D.U. Shah, Advocate, for the Petitioners

Shri M.R. Anand, Government Pleader, with Shri D.N. Patel,
Assistant Government Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 11th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 14th March 1985 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of deceased Sushilaben Maganlal and

one Shardaben Govindji to be in excess of the ceiling limit by 9726.70 square meters.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing Survey No.44 admeasuring 11226.70 square meters situated at Village Vavdi within the urban agglomeration of Rajkot (the disputed land for convenience). It originally belonged to one Maganlal Bhawanji Mehta. He was alive on 17th February 1976 and breathed his last on 3rd May 1980. He was survived by his two daughters, named, Sushilaben and Shardaben. They filed their declaration in the prescribed form under sec. 6(1) of the Act through their Power-of-attorney-holder, named, Umeshbhai Vrajlal Mehta some time in 1981. It appears that the draft statement under sec. 8 of the Act was sent some time on 29th March 1982. On behalf of the declarants, written objections thereto were submitted on 26th April 1982. Thereafter the matter was kept for hearing on 11th March 1985. It appears that on that day the Power-of-attorney-holder submitted one application indicating that one declarant Sushilaben Maganlal Mehta breathed her last on 24th January 1983 and that fact was informed to respondent No.1 by her son, named, Deepak Maganlal Mehta on 14th March 1983 together with the death certificate of the deceased. It was further mentioned therein that the Power-of-attorney-holder never remained as such on the death of Sushilaben. Its copy is at Annexure B to this petition. Despite that application, respondent No.1 proceeded with the matter and, by his order passed on 14th March 1985, declared the holding to be in excess of the ceiling limit by 9726.70 square meters. Its copy is at Annexure C to this petition. That aggrieved the present petitioners and they have therefore invoked the extra-ordinary jurisdiction of this court under Art. 226 of the Constitution of India by means of this petition for questioning its correctness.

3. As pointed out hereinabove, the original owner, named, Maganlal Bhawanji Mehta was alive on 17th February 1976 when the Act came into force. He ought to have filed his declaration in the prescribed form under sec. 6(1) of the Act. If he had filed such declaration in the prescribed form, he was entitled to only one ceiling unit of 1500 square meters and the rest would have been declared surplus under the Act. He breathed his last on 3rd May 1980. Only thereafter petitioner No.2 and the mother of petitioner No.1 filed their declaration in the prescribed form under sec. 6(1) of the Act and they claimed two ceiling units, one for each. They cannot be granted one ceiling unit each in view of the fact that the original land-holder was alive on the date of coming into force of the Act and he would have been entitled to only one ceiling unit of 1500 square meters. That is the view taken by respondent No.1 in his impugned order at Annexure C to this petition.

4. It is true that the power-of-attorney-holder of one of the declarants was not authorised to represent her in view of her death prior to the date of hearing fixed on 11th March 1985. In that view of the matter, the impugned order at Annexure C to this petition cannot be sustained in law. However, no useful purpose will be served by upsetting it and remanding the matter to respondent No.1 for his fresh disposal according to law. The reason therefor is quite simple. As pointed out hereinabove, the original owner was alive on 17th February 1976 and he would have been entitled to only one ceiling unit of 1500 square meters. That is what respondent No.1 has done in his impugned order at Annexure C to this petition. In exercise of my discretionary jurisdiction under Art. 226 of the Constitution of India, I think it is not necessary to interfere with the impugned order at Annexure C to this petition on this ground.

5. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.
